

## Remarks

The following remarks are submitted to address all issues in this case, and to put this case in condition for allowance. Applicant amends the claims in this case simply to better define the subject matter of the present invention; no new matter is added in these amendments. After the above amendment, application claims 1-4, 6, 8-30, and 32 are pending in the application. Application claims 1, 26, and 27 are the only independent claims. Applicants have studied the Office Action mailed July 27, 2007 (“Office Action”) and have the following remarks.

### Green

#### **35 USC § 102**

The Examiner rejected claims 1-2, 5-6, 8-12, 16-21, and 25-26 under 35 USC § 102(b) as being anticipated by Green et al., U.S. 5,391,130 (“Green”) and claims 27-32 as anticipated by or rendered obvious in light of Green. The Examiner stated that Green discloses a frame, a first footpad connected to the frame so as to rotate along a first path in a first direction about a first drive axis, a second footpad connected to the frame so as to rotate along a second path in a second direction about a second drive axis, and a resistance mechanism attached to the frame, the resistance mechanism effecting the rotation of the first footpad along the first path and the rotation of the second footpad along the second path, wherein the second path is non-parallel to the first path and wherein the first footpad and the second footpad each move independently of each other. The Examiner further noted that because Green’s footpads are “capable of pivoting,” they “therefore are capable of maintaining a generally parallel relationship at all points of the first and second path respectively.” Office Action, p. 2; accord, id., p. 7. The Examiner applied

this contention regarding Applicant's independent claim 1 to dependent claims 2-25 thereof, and to independent claim 26.

Applicants respectfully assert that Green does not show Applicants' claimed footpads, which maintain a generally parallel relationship to each other at all points of movement. Applicants' claimed structure does not permit Applicants' footpads to swing to point toward or away from each other, as that would cause the footpads to become nonparallel. Claim 1, as amended, claims Applicants' footpads maintained in a generally parallel orientation throughout the motion by a first rotator and a second rotator corresponding to each footpad, while claim 26 provides "means for fixing." Applicants' specification supports these elements. See, e.g., ¶¶ 15, 20.

Applicants respectfully contend that Green does not show Applicants' element of the footpads fixed in a generally parallel orientation by a first and second rotator, or by means for fixing, claimed in amended claims 1 and 26 herein. Green's four-bar rotational component causes Green's footpads to pivot, in that the heel of the footpad engaged in a downstroke swings outwardly at the end of the downstroke. Green, col. 2 l. 67 - col. 3 l. 2 ("As will be observed, the foot pad moves in an arc to the rear and the outside during this movement. This simulates the actual path of foot movement during ice skating."); FIG. 2. Green's rotator specifically encourages this outward pivoting, in contrast to Applicants' rotators or other means for fixing that prohibit any such nonparallel relationship between the footpads. See id., col. 2, ll. 5-13; col. 2 l. 54 - col. 3 l. 2. Green's capacity for pivoting, on which the Examiner based the rejection, is in fact the antithesis of Applicants' claimed fixed and maintained generally parallel relationship between the first and second footpads. Green's capacity to pivot does not show Applicants' fixed generally parallel orientation, but in fact shows the opposite. Moreover, Green does not

show the structural elements by which Applicants maintain the generally parallel orientation. Thus, Applicants respectfully conclude, Green does not show Applicants' claimed footpads in a generally parallel relationship, maintained by rotators or means for fixing throughout the motion, and so does not anticipate independent claims 1 or 26. Applicants respectfully assert that dependent claims 2-25 therefrom are similarly not anticipated by Green.

### **35 USC § 102 and § 103**

The Examiner stated that Green discloses a method of exercising comprising providing an exercise machine including a frame, a pair of footpads movably mounted on the frame so that each of the footpads can move independently of one another, placing a foot on the first and second footpads, and moving the first human foot and the second human foot interchangeably in a manner so planes created by the toe, heel, and calf of each foot are both translated relatively simultaneously along a path non-parallel to the planes. The Examiner further contended that Green "at the same time teaches footpads that can rotate in order to allow the footpads to remain in a . [sic]". Office Action, p. 4. Applicants presume that the Examiner meant to say that Green's footpads can remain generally parallel; if this assumption is incorrect, Applicants would appreciate timely notice thereof. The Examiner also stated that "Green further discloses planes that are parallel at the starting position." Id. The Examiner applied these contentions regarding Applicants' claim 27 to dependent claims 28-32 therefrom.

Applicants respectfully assert that no method of exercise shown in Green teaches the claimed element of the generally parallel relationship between the first and second human feet maintained throughout the movement. At no point does Green teach a method of exercise in which the feet maintain a fixed generally parallel orientation throughout the entire movement.

Green's only disclosed embodiment shows the footpads swinging outward as they are pushed downward. The Examiner's contention that Green's structure may be used in a continuous generally parallel manner is simply not supported by Green.

Moreover, Green's structure does not encourage the Examiner's leap of logic: utilizing Green's footpads necessarily results in the footpads becoming nonparallel to each other, in that the heel of the foot engaged in a downstroke swings outwardly at the end of the downstroke. See Green, col. 2 l. 67 - col. 3 l. 2 ("As will be observed, the foot pad moves in an arc to the rear and the outside during this movement. This simulates the actual path of foot movement during ice skating."); FIG. 2. Applicants respectfully assert that the Examiner's reliance on Green's structure that causes nonparallel movement to show a generally parallel method of using that structure is therefore unsupported.

Finally, Applicants respectfully contend that the Examiner's point that "Green further discloses planes that are parallel at the starting position" is insufficient to show Applicants' claimed planes that are generally parallel not only at the starting position, but throughout the movement or exercise stroke. Green does not disclose such a continuously maintained generally parallel relationship.

On the above bases, Applicant respectfully concludes that Green does not show, and in fact claims the opposite of, Applicant's claimed method in which the first human foot and said second human foot remain generally parallel throughout the movement. Green therefore does not anticipate independent claim 27 dependent claims 28-30 and 32 therefrom.

The Examiner also rejected claims 3, 14-15, 22, and 23-24 under 35 U.S.C. 103(a) as being unpatentable over Green in light of various references (respectively, Bond, Wolf, Jerome, and Jerome and further in view of Webb). As set forth herein, Green fails to show all elements

of independent claim 1 from which these claims depend, namely structural components that maintains the footpads' generally parallel orientation relative to each other throughout their paths. None among Bond, Wolf, Jerome, or Webb fill the gap of Green. As such, these claims are not rendered obvious by the cited references.

Gresko

The Examiner rejected claims 1, 4, 8, and 10 under 35 USC 102(b) as being anticipated by Gresko, stating that Gresko discloses a frame, a first footpad connected to the frame so as to rotate along a first path in a first direction about a first drive axis, a second footpad connected to the frame so as to rotate along a second path in a second direction about a second drive axis, and a resistance mechanism attached to the frame, the resistance mechanism effecting the rotation of the first footpad along the first path and the rotation of the second footpad along the second path, wherein the second path is non-parallel to the first path and wherein the first footpad and the second footpad each move independently of each other.

Applicants respectfully contend that by asserting that Gresko permits independent movement, the Examiner is in fact changing Gresko to omit the lock block of Gresko, and is not accurately representing the cited reference. Gresko does not teach any means by which the footpads may be joined by the lockblock and yet move independently of each other, nor any other means of independent movement from each other. Gresko teaches only movement constrained by the footpads' joinder to each other by the lock block. As such, Gresko does not anticipate independent claim 1 or dependent claims 4, 8 or 10 therefrom.

Applicants also respectfully assert that Gresko does not anticipate independent claim 1 or dependent claims 4, 8, or 10 therefrom in that, among other things, Gresko does not show the

first drive axis being fixed in a generally parallel orientation relative to the second drive axis. Gresko teaches and claims pivotal connecting means whereby the first and second drive axes may be moved between a parallel orientation and an opposed position. See, e.g., col. 3, lines 27-31; col. 4, ll. 38-42; col. 4, ll. 53-56; col. 5, ll. 22-29; col. 6, ll. 7-14; col. 6, ll. 24-31. In contrast, Applicants' first and second drive axes are fixed in a generally parallel orientation. See FIGS. 1, 2, 5, 7, 8, 9, 12, and 14. Because Gresko does not show a first and second drive axis fixed in a parallel orientation, Gresko does not anticipate independent claim 1 or dependent claims 4, 8, or 10 therefrom.

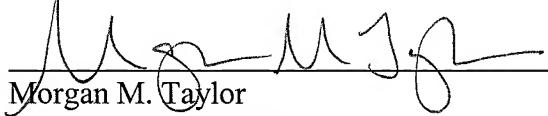
## Conclusion

In light of the above, Applicant respectfully requests allowance of all pending claims so that this case can pass on to issue. Enclosed is a Request for Continued Examination and the associated fee. Applicant believes no additional fees are due. However, the Commissioner is hereby authorized to charge or credit to our Deposit Account, No. 50-0975, any additional fees due in connection with the filing of this Response.

If there are any questions regarding this Response, the Examiner is invited to contact the undersigned at (314) 444-1316.

Respectfully submitted,  
Lewis, Rice & Fingersh, L.C.

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